

AMENDED IN SENATE APRIL 14, 2009

Senate Joint Resolution

No. 1

Introduced by Senator Ducheny

January 27, 2009

Senate Joint Resolution No. 1—Relative to the Sales Tax Fairness and Simplification Act.

LEGISLATIVE COUNSEL'S DIGEST

SJR 1, as amended, Ducheny. Sales Tax Fairness and Simplification Act.

This measure would urge members of the California congressional delegation to join as cosponsors of the federal Sales Tax Fairness and Simplification Act, or similar legislation *in support of legislative action by the Congress of the United States to allow states to collect use taxes on products sold over the Internet*, and for the Congress of the United States to pass the legislation and the President to sign that legislation.

Fiscal committee: no.

1 WHEREAS, United States Supreme Court decisions (National
2 Bellas Hess v. Department of Revenue (1967) 386 U.S. 753 and
3 Quill Corp. v. N.D. (1992) 504 U.S. 298) have interpreted the
4 Commerce Clause of the United States Constitution to deny states
5 the authority to require the collection of use taxes by out-of-state
6 sellers that have no physical presence in the taxing state; and
7 WHEREAS, The failure to collect use taxes on remote sales
8 through traditional carriers and the erosion of sales and use tax
9 due to electronic commerce threatens the future viability of the
10 sales and use tax as a stable revenue source for state and local
11 governments; and

1 WHEREAS, The Center for Business and Economic Research
2 at the University of Tennessee has estimated that states could lose
3 as much as \$33 billion in 2008 because they were not able to collect
4 taxes on remote sales, including sales on the Internet; and

5 WHEREAS, The same study estimated that California may have
6 lost as much as \$4 billion in 2008 because of the failure to require
7 remote sellers to collect our state's use taxes; and

8 WHEREAS, Since 1999, state legislators, governors, local
9 elected officials, state tax administrators, and representatives of
10 the private sector have worked to develop a streamlined sales and
11 use tax system for the 21st century; and

12 WHEREAS, Between 2001 and 2002, 40 states enacted
13 legislation expressing the intent to simplify the states' sales and
14 use tax collection systems, and to participate in ~~multistate~~
15 discussions to ~~finalize, and ratify, an interstate agreement to~~
16 ~~streamline payment and collection of the~~ *allow for the collection*
17 *of states' sales and use taxes; and*

18 ~~WHEREAS, On November 12, 2002, delegates from these 40~~
19 ~~states unanimously ratified the Streamlined Sales and Use Tax~~
20 ~~Agreement, which substantially simplifies state and local sales~~
21 ~~and use tax systems, addresses the burdens to interstate commerce~~
22 ~~that were of concern to the United States Supreme Court, and~~
23 ~~protects state sovereignty; and~~

24 ~~WHEREAS, The Streamlined Sales and Use Tax Agreement~~
25 ~~provides states with a blueprint to create a simplified and more~~
26 ~~uniform sales and use tax system, and provides justification for~~

27 ~~WHEREAS, The actions of the states provide justification for~~
28 Congress to enact legislation to allow states to require remote
29 sellers to collect the states' use tax; and

30 ~~WHEREAS, California enacted legislation, SB 157 in 2003,~~
31 ~~expressing the intent of the Legislature to bring this state's sales~~
32 ~~and use tax statutes into compliance with the Streamlined Sales~~
33 ~~and Use Tax Agreement; and~~

34 WHEREAS, By January 1, 2008, 22 states: Arkansas, Indiana,
35 Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada,
36 New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, South
37 Dakota, Tennessee, Texas, Utah, Vermont, Washington, West
38 Virginia, and Wyoming, representing over 35 percent of the total
39 population of the United States, *have enacted legislation to bring*
40 ~~their state's sales and use tax statutes into compliance with the~~

1 ~~agreement; and provide a state statutory basis to require remote~~
2 ~~sellers to collect the states' use tax; and~~

3 WHEREAS, The California State Legislature and our colleagues
4 in other states have shown the resolve to acknowledge the
5 complexities of the current sales and use tax system, have worked
6 with the business community to formulate ~~a truly simplified and~~
7 ~~streamlined collection system~~ *alternative collection systems*, and
8 have shown the political will to enact the necessary changes to
9 make the ~~streamlined collection system~~ *collection systems* the law;
10 and

11 WHEREAS, In the 110th Congress, the Sales Tax Fairness and
12 Simplification Act (S.34 by U.S. Senators Enzi, Inouye, Leahy, et
13 al.; H.R. 3396 by Congress persons Delahunt, LaHood, Conyers,
14 et al.) was introduced to grant those states that complied with the
15 Streamlined Sales and Use Tax Agreement the authority to require
16 out-of-state sellers, regardless of nexus, to collect those states' use
17 taxes on remote sales; and

18 WHEREAS, Until Congress and the President enact the Sales
19 Tax Fairness and Simplification Act or similar legislation,
20 participation by remote sellers not engaged in business in a state
21 is only voluntary and thus *allowing states to require remote sellers*
22 *to collect the states' use tax*, states are unlikely to close the revenue
23 gap between what is owed on remote transactions and what is
24 collected; and

25 WHEREAS, Members of the United States Congress have
26 termed this federal legislation as “fiscal relief for the states that
27 does not cost the federal government a single cent” and ensures
28 the viability of the sales and use tax as a state revenue source; now,
29 therefore, be it

30 *Resolved by the Senate and the Assembly of the State of*
31 *California, jointly*, That the California State Legislature calls upon
32 the members of our congressional delegation to join as cosponsors
33 ~~of the Sales Tax Fairness and Simplification Act or similar~~
34 ~~legislation and to support its swift adoption by the Congress of the~~
35 ~~United States, or take other appropriate~~ *in support of* legislative
36 *action by the Congress of the United States* to allow states to collect
37 use taxes on products sold over the Internet; and be it further

38 *Resolved*, That the California State Legislature urges the
39 President to sign into law ~~the Sales Tax Fairness and Simplification~~
40 ~~Act or other legislation~~ allowing for the collection of use taxes on

1 products sold over the Internet, upon its passage by the Congress;
2 and be it further
3 *Resolved*, That the Secretary of the Senate transmit copies of
4 this resolution to the President and Vice President of the United
5 States, to the President pro Tempore of the United States Senate,
6 to the Speaker of the House of Representatives, to each Senator
7 and Representative from California in the Congress of the United
8 States, and to the author for appropriate distribution.

O